

## § 240.15d-19

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*asset-backed securities required.* With respect to each report included pursuant to paragraph (b) of this section, the annual report on Form 10-K must also include a report by a registered public accounting firm that attests to, and reports on, the assessment made by the asserting party. The attestation report on assessment of compliance with servicing criteria for asset-backed securities must be made in accordance with standards for attestation engagements issued or adopted by the Public Company Accounting Oversight Board.

NOTE TO § 240.15d-18: If multiple parties are participating in the servicing function, a separate assessment report and attestation report must be included for each party participating in the servicing function. A party participating in the servicing function means any entity (e.g., master servicer, primary servicers, trustees) that is performing activities that address the criteria in paragraph (d) of Item 1122 of Regulation AB (§ 229.1122(d) of this chapter), unless such entity's activities relate only to 5% or less of the pool assets.

[70 FR 1622, Jan. 7, 2005]

### § 240.15d-19 Reports by shell companies on Form 20-F.

Every foreign private issuer that was a shell company, other than a business combination related shell company, immediately before a transaction that causes it to cease to be a shell company shall, within four business days of completion of that transaction, file a report on Form 20-F (§ 249.220f of this chapter) containing the information that would be required if the issuer were filing a form for registration of securities on Form 20-F to register under the Act all classes of the issuer's securities subject to the reporting requirements of section 13 (15 U.S.C. 78m) or section 15(d) (15 U.S.C. 78o(d)) of the Act upon consummation of the transaction, with such information reflecting the registrant and its securities upon consummation of the transaction.

[70 FR 42247, July 21, 2005]

### § 240.15d-20 Plain English presentation of specified information.

(a) Any information included or incorporated by reference in a report filed under section 15(d) of the Act (15 U.S.C. 78o(d)) that is required to be dis-

closed pursuant to Item 402, 403, 404 or 407 of Regulation S-K (§ 229.402, § 229.403, § 229.404 or § 229.407 of this chapter) must be presented in a clear, concise and understandable manner. You must prepare the disclosure using the following standards:

(1) Present information in clear, concise sections, paragraphs and sentences;

(2) Use short sentences;

(3) Use definite, concrete, everyday words;

(4) Use the active voice;

(5) Avoid multiple negatives;

(6) Use descriptive headings and sub-headings;

(7) Use a tabular presentation or bullet lists for complex material, wherever possible;

(8) Avoid legal jargon and highly technical business and other terminology;

(9) Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates understanding of the disclosure; and

(10) In designing the presentation of the information you may include pictures, logos, charts, graphs and other design elements so long as the design is not misleading and the required information is clear. You are encouraged to use tables, schedules, charts and graphic illustrations that present relevant data in an understandable manner, so long as such presentations are consistent with applicable disclosure requirements and consistent with other information in the document. You must draw graphs and charts to scale. Any information you provide must not be misleading.

(b) [Reserved]

NOTE TO § 240.15d-20: In drafting the disclosure to comply with this section, you should avoid the following:

1. Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;

2. Vague "boilerplate" explanations that are imprecise and readily subject to different interpretations;

3. Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and

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4. Disclosure repeated in different sections of the document that increases the size of the document but does not enhance the quality of the information.

[71 FR 53263, Sept. 8, 2006, as amended at 73 FR 979, Jan. 4, 2008]

### EXEMPTION OF CERTAIN ISSUERS FROM SECTION 15(D) OF THE ACT

#### **§ 240.15d-21 Reports for employee stock purchase, savings and similar plans.**

(a) Separate annual and other reports need not be filed pursuant to section 15(d) of the Act with respect to any employee stock purchase, savings or similar plan: *Provided*,

(1) The issuer of the stock or other securities offered to employees through their participation in the plan files annual reports on Form 10-K (§249.310 of this chapter); and

(2) Such issuer furnishes, as a part of its annual report on such form or as an amendment thereto, the financial statements required by Form 11-K (§249.311 of this chapter) with respect to the plan.

(b) If the procedure permitted by this Rule is followed, the financial statements required by Form 11-K with respect to the plan shall be filed within 120 days after the end of the fiscal year of the plan, either as a part of or as an amendment to the annual report of the issuer for its last fiscal year, *provided that* if the fiscal year of the plan ends within 62 days prior to the end of the fiscal year of the issuer, such information, financial statements and exhibits may be furnished as a part of the issuer's next annual report. If a plan subject to the Employee Retirement Income Security Act of 1974 uses the procedure permitted by this Rule, the financial statements required by Form 11-K shall be filed within 180 days after the plan's fiscal year end.

[27 FR 7871, Aug. 9, 1962, as amended at 55 FR 23929, June 13, 1990; 73 FR 979, Jan. 4, 2008]

#### **§ 240.15d-22 Reporting regarding asset-backed securities under section 15(d) of the Act.**

(a) With respect to an offering of asset-backed securities registered pursuant to §230.415(a)(1)(x) of this chapter, annual and other reports need not be filed pursuant to section 15(d) of the

Act (15 U.S.C. 78o(d)) regarding any class of securities to which such registration statement relates until the first bona fide sale in a takedown of securities under the registration statement.

(b) Regarding any class of asset-backed securities in a takedown off of a registration statement pursuant to §230.415(a)(1)(x) of this chapter, no annual and other reports need be filed pursuant to section 15(d) of the Act regarding such class of securities as to any fiscal year, other than the fiscal year within which the takedown occurred, if at the beginning of such fiscal year the securities of each class in the takedown are held of record by less than three hundred persons.

(c) Paragraph (a) or (b) of this section does not affect any other reporting obligation applicable with respect to any classes of securities from additional takedowns under the same or different registration statements or any reporting obligation that may be applicable pursuant to section 12 of the Act (15 U.S.C. 78l).

[70 FR 1623, Jan. 7, 2005]

#### **§ 240.15d-23 Reporting regarding certain securities underlying asset-backed securities under section 15(d) of the Act.**

(a) Regarding a class of asset-backed securities, if the asset pool for the asset-backed securities includes a pool asset representing an interest in or the right to the payments or cash flows of another asset pool, then no separate annual and other reports need be filed pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) because of the separate registration of the distribution of the pool asset under the Securities Act (15 U.S.C. 77a et seq.), if the following conditions are met:

(1) Both the issuing entity for the asset-backed securities and the entity that issued the pool asset were established under the direction of the same sponsor and depositor;

(2) The pool asset was created solely to satisfy legal requirements or otherwise facilitate the structuring of the asset-backed securities transaction;

(3) The pool asset is not part of a scheme to avoid the registration or reporting requirements of the Act;